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SUBJECT: ITALIAN JUSTICE: SLOW AND INCREASINGLY

DYSFUNCTIONAL

REF: MILAN 34

¶1. Summary. The uproar over a Milan justice's decision to free accused terrorists because they allegedly fit the definition of guerrilla war-fighters (reftel) is only one indicator of ongoing problems in the Italian judicial system. At the inauguration of the judicial year, the Chief Prosecutor of the Cassation Court announced that an astonishing 81% of reported crimes went unpunished. Extensive trial delays forced plaintiffs and defendants to increasingly use alternative out-of-court settlements based on mediation and arbitration. Citing constitutional concerns, President Ciampi returned to Parliament for revision the 2004 judicial reforms proposed by the Government. Magistrates have gone on strike twice to oppose these reforms, arguing they will politicize a fiercely independent judiciary. Meanwhile, PM Berlusconi has long alleged that the judicial system is politically biased towards the left. Biased or not, the system is increasingly dysfunctional and undermines efforts to combat crime, retain citizens' trust and attract foreign investment. A structural overhaul of the judiciary system would require amending the Constitution, a huge undertaking that so far does not rank as a priority for the Berlusconi Government. End Summary.

¶2. At the beginning of the judicial year in January, the Chief Prosecutor of the Cassation Court, Francesco Favara, issued a warning about growing problems in the judiciary. He stated that in 2004 almost three million crimes were reported to authorities, and an astonishing 81% of these crimes went unpunished. This includes about half of all murders. When justice is delivered, it takes a long time. The European Court of Human Rights has repeatedly issued judgments against Italy for excessively long trials. Favara reported that the long duration of proceedings - investigation, trial and appeal phases last an average total of five years for criminal cases and eight years for civil cases - spawned in 2004 an 11 percent increase in out-of-court settlements via arbitration and mediation by frustrated citizens and businesses.

¶3. Critics of the justice system cite several reasons for the problems: the large number of minor offenses in the penal code; unclear and contradictory legal provisions; excessively long pre-trial detention, each prosecutor's complete freedom to set prosecutorial priorities; and insufficient resources, including an inadequate number of judges. The fact that every single crime that comes before a prosecutor, from allegations in the media to formal charges in legal channels, must be investigated creates a heavy workload that impedes speedy prosecution of serious crimes.

¶4. In his January remarks, Favara pointed out that the slow pace of justice also often leads to either the expiration of the statute of limitations, where the criminal goes free, or a late punishment, which appears as delayed vengeance. Foreign businesses complain that long judicial proceedings over labor, intellectual property rights and commercial litigation discourage foreign investment.

¶5. In December 2004, the Parliament approved a judicial reform package pushed by the Berlusconi Government to "depoliticize" the judiciary and make it more efficient. The measure alters the current structure of magistrate's careers into separate tracks for prosecutors and judges and gives chief prosecutors the responsibility to prioritize cases. Magistrates fought the reforms and went on strike twice to oppose them. Citing Constitutional concerns, President Ciampi sent the measure back to the Parliament for revision; the Government is preparing an amended bill and is confident it can address these concerns without altering the substance of the reforms. Critics suggested the measure was an assault on the independence of the judiciary by Berlusconi because he himself has been the subject of several judicial inquiries. (Comment: In fact, Italy's Constitution grants the judiciary significant independence from political interference; however, some influential magistrates are the product of a 1970's program by the Communist Party to place their members in the judiciary.)

¶6. In controversial moves, the Government succeeded in winning Parliamentary approval in 2003 for legislation

granting immunity from prosecution for the country's five highest officials (later abrogated by the Constitutional Court) and in 2004 from the Chamber of Deputies for a measure to limit the statute of limitations for crimes other than terrorism, kidnapping and Mafia-related activity. Some critics suggested the first bill was to give Berlusconi immunity, and the second to help former Berlusconi advisors

facing corruption charges. Without citing specifics, Favara suggested that limiting the statute of limitations might create an amnesty for several criminals facing current charges. Anna Finocchiaro, an MP from the center-left DS Party, suggested that reducing the statute of limitations would undermine the credibility of institutions and the security of citizens. This week, Berlusconi and Ciampi sparred publicly over the proposal to shorten the statute of limitations, with Berlusconi accusing Ciampi of listening to the concerns of the left. The debate has practical and occasional high-level implications. In November 2003, Berlusconi's former lawyer and one-time defense minister was sentenced to five years' imprisonment for bribing a judge in 1991; the case is pending in the appeals courts. In 2004, Berlusconi was acquitted of a bribery charge dating back to 2000; another charge was dropped after judges ruled the statute of limitations had run out.

17. Favara did not express a public view on the judicial reform bill itself but commented that, in order to improve the entire judicial system, it has to be accompanied by a deep revision of the criminal code and judicial procedures. Minister of Justice Roberto Castelli agreed, arguing that the total number of crimes has to be reduced to allow magistrates to focus on the most important cases. The leader of the Daisy Party (the second largest party of the center-left), Francesco Rutelli, warned that the government's reform would establish a hierarchical structure in prosecutors' offices, and the resulting bureaucracy would undermine citizens' rights. Luciano Violante, currently an MP for the Democrats of the Left Party (and formerly sponsor of the program to recruit Communist magistrates), suggested that the measure would force magistrates to spend 40 percent of their time preparing for exams needed to advance their careers. In his view, the government's bill focused on modifying checks and balances between politics and judiciary instead of improving citizen services. There has been little substantive discussion about the need to streamline judicial procedures.

18. Comment: The slow, ineffective pace of justice and allegations of political interference by both the right and the left undermine citizen trust in government, with consequences affecting everything from lax parking enforcement to the growth of the underground economy, continued mafia activity, and Italy's inability to attract significant foreign investment. Critics of the recent Milan justice's ruling to free accused Islamic terrorists argue that judicial reform is now also important for the war on terrorism. The Government is taking steps to limit the impact of the Milan decision and is reviewing whether anti-terrorism laws should be clarified and/or strengthened. Meanwhile, we expect a revised version of Berlusconi's judicial reform will be finalized this year but will provide only a partial solution. A structural overhaul of the judiciary system would require amending the Constitution, a huge undertaking that so far does not rank as a priority for the Berlusconi Government.

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